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REMARKS

Claims 29-35 remain pending in the above-referenced application.

Claims 29-31, 33, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,423,830 to Schneebaum in view of United States Patent No. 5,190,542 to Nakao et al. ("Nakao"). Among the steps recited in claim 29 is "applying a vacuum pressure to an interior of the flexible cup to draw the selected portion thereinto." Although Schneebaum teaches the use of a suction source 30 in a polyp retaining assembly, Schneebaum does not use suction to "draw" a polyp into capture component 20. Instead of drawing a "selected portion of tissue" into capture component 20, the suction source 30 is used to retain or secure a polyp that had previously been drawn into the capture component through means other than suction source 30. For instance, "endoscope insertion member 32, as well as retrieval device 10, is manipulated from outside the patient to bring opened web member 22 into such juxtaposition with polyp PO that the polyp is inserted through a mouth of web member and into the web member, as illustrated in FIGS. 3B and 3C" Column 5, lines 30-35. This passage describes a polyp being "inserted...into the web member," which means it is drawn into the web member, but this drawing in is accomplished without using any vacuum. The vacuum applied by suction source 30 comes into play after the polyp has already been drawn into the web member, at which point the purpose of the vacuum is to assist the web member 22 retain the previously captured polyp. Specifically, the "clamping of polyp PO by ribs 26 and web member 22 under the camming closure action of tubular member 12 may be supplemented by the application of suction to the space between an inner concave surface of cup-shaped web member 22 and polyp PO." Column 5, lines 43-47. Thus, the suction from source 30 plays no role to draw a polyp PO into "cup-shaped web member 22"; rather, the suction applied by the Schneebaum system is help retain an already drawn-in polyp by supplementing the mechanical grasping achieved by the web member 22.

As for Nakao, Applicants submit that Nakao does not overcome the deficiencies of Scheebaum. As for dependent claims 30, 31, 33, and 34, these claims are patentable for the same reasons given in support of the patentability of claim 29.

Claims 29-35 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of United States Patent No. 6,648,897. In view of the terminal disclaimer submitted herewith, Applicant submits that this rejection has been obviated.

It is respectfully submitted that all of the presently pending claims are novel, nonobvious and useful and that the present application is in condition for allowance. Therefore, a prompt and favorable action on the merits is earnestly solicited. The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

Respectfully submitted,

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